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3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

5 RICHARD ROY SCOTT,

6 Plaintiff,

7 v.

8 KELLY CUNNINGHAM,

9 Defendant.

No. C11-5509 BHS/KLS

REPORT AND RECOMMENDATION
Noted For: March 9, 2012

10 Before the Court is Plaintiff Richard Roy Scott's motion for temporary relief. ECF
11 No. 136. Mr. Scott is confined at the Special Commitment Center (SCC) on McNeil Island in
12 Pierce County. He has a long history of abusive litigation tactics and is the subject of case
13 management orders in the Western District of Washington. The Court is managing this case
14 pursuant to those Orders. ECF No. 4; *Scott v. Seling*, C04-5147 RJB, ECF Nos. 152 and 170 ¶ 9.

15
16 Pursuant to the case management orders, any motions for temporary relief filed by
17 Mr. Scott must first be reviewed by the judge:

18 Any motion for temporary restraining order (TRO) or other injunctive relief
19 must comply with all of the requirements of Fed. R. Civ. P. 65. Any motion
20 for a TRO or other injunctive relief, other than contained in a complaint, must
21 first be reviewed by the judge. If the motion does not meet the requirements
22 of Fed. R. Civ. P. 65 the motion shall be filed with the judge's notation that
the document is to be filed with no further ruling by the Court. The defendant
in the case need not file a response to the motion unless directed to do so by
the judge.

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24 *Scott v. Seling*, C04-5147 RJB, ECF No. 152, at 3.

25 Plaintiff has filed at least ten previous motions for temporary relief in this case which
26 have been found to be without merit. See ECF Nos. 51, 54, 60, 64, 65, 67, 84, 91, 96, and 102.

1 The undersigned has recommended that ECF No. 61 be re-referred for further briefing. ECF No.
2 97.

3 DISCUSSION

4 A preliminary injunction is an “extraordinary and drastic remedy” that is never awarded
5 as of right. *Munaf v. Geren*, 553 U.S. 674, 689-90, 128 S. Ct. 2207, 2219, 171 L.Ed.2d 1 (2008)
6 (citations and quotation omitted). Instead, the instant motion requires the court to “balance the
7 competing claims of injury and ... the effect of the granting or withholding of the requested
8 relief.” *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 129 S. Ct. 365, 376, 172 L.Ed.2d 249
9 (2008) (quoting *Amoco Prod. Co. v. Gambell*, 480 U.S. 531, 542, 107 S. Ct. 1396, 94 L.Ed.2d
10 542 (1987)). A plaintiff seeking a preliminary injunction must establish the following: (1) a
11 likelihood of success on the merits, (2) a likelihood of irreparable injury to the plaintiff if
12 injunctive relief is not granted, (3) a balance of hardships favoring the plaintiff, and (4)
13 advancement of the public interest. *Id.* (citations omitted). This is an “extraordinary remedy
14 that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Id.* at
15 376. Moreover, Plaintiff must show more than a mere “possibility” of irreparable harm, but
16 instead must “demonstrate that irreparable injury is likely in the absence of an injunction.” *Id.* at
17 375 (emphasis and citations omitted).

18 Thus, Mr. Scott must show that he is likely to succeed on the merits of his claim, that he
19 will be irreparably harmed if he is not granted the extraordinary relief he seeks, that the balance
20 of harm favors him, and that public interest favors granting the relief he seeks. In his Amended
21 Complaint, Mr. Scott raises three issues relating to the conditions of his confinement at the SCC:
22 (1) inadequate medical care, (2) lack of emergency services, and (3) interference with access to
23 courts due to inadequate processing of mail and legal copies. ECF No. 2.

1 With the foregoing legal principals and Mr. Scott's claims in mind, the undersigned
2 makes the following recommendations as to Mr. Scott's motion for temporary injunction:

3 In this motion, Mr. Scott requests that this "court restrain the defendant and his SS (staff)
4 from returning or withholding all discovery Scott receives in the mail". ECF No. 136. Mr. Scott
5 states that Defendant Cunningham has instructed the mailroom not to allow Scott to receive
6 anything received in the mail marked "Not Legal Mail. Contains Public Disclosure Materials.
7 Institutional Policy may prohibit delivery to recipient." Or similar words." *Id.*, p. 1. He claims
8 that the Defendant hopes to prevents Mr. Scott from receiving all discovery in his cases,
9 "especially in this one." *Id.*, p. 2.

11 The matters complained of in this motion are completely unrelated to the claims raised in
12 this lawsuit. Further, Mr. Scott makes no showing of any immediate threat of irreparable harm
13 and makes no colorable argument for relief. In fact, the record shows otherwise. In his sixth
14 motion for the appointment of counsel, Mr. Scott also alleged that the SCC mailroom is
15 withholding "new incoming . . . evidence." ECF No. 111, at 2. However, Mr. Scott is not
16 allowed to engage in discovery without order of this Court. According to counsel for defense,
17 she received Mr. Scott's first court-approved discovery request on December 21, 2011. Thus, at
18 the time he signed his motion for temporary restraining order on January 9, 2012, responses to
19 the requests were not yet due. Defendant's responsive documents were due on January 23, 2012.
20 Defendant intended to provide discovery responses at that time. ECF No. 121, p. 3.

23 It is recommended Defendant Cunningham not be directed to file a response to this
24 motion, that the noting date of this motion (ECF No. 136) be **stricken**, and that there be no
25 further ruling on this motion by the Court.

1 **CONCLUSION**

2 Based on the foregoing and the case management orders governing this case, the
3 undersigned recommends that no further action be taken on ECF No. 136.

4 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have
5 fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P.
6 6. Failure to file objections will result in a waiver of those objections for purposes of appeal.
7 *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the
8 Clerk is directed to set the matter for consideration on **March 9, 2012**, as noted in the caption.
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11 **DATED** this 16th day of February, 2012.

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14 Karen L. Strombom
15 United States Magistrate Judge
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